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Michael S, Kopelman, Esq. (MK 6104)

In Re:

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW JERSEY

JOHN PATRICK O'GRADY,

CHAPTER 11

Debtor.

CASE NO. 19-19513-JKS

**SECOND AMENDED
DESIGNATION OF RECORD ON APPEAL
COMBINED WITH STATEMENT OF THE ISSUES
PURSUANT TO BANKRUPTCY RULE 8009**

A. DESIGNATION OF RECORD ON APPEAL in Case No. 19-19513

Filing Date	#	Docket Text
06/02/2021	221	Motion to Approve Compromise under Rule 9019 Filed by John Sywilok on behalf of John Sywilok. Hearing scheduled for 7/13/2021 at 10:00 AM at JKS – Courtroom 3D, Newark. (Attachments: # 1 Certification # 2 Exhibit # 3 Proposed Order # 4 Certificate of Service) (Sywilok, John) (Entered: 06/02/2021)
06/03/2021	222	Document re: Letter (related document: 221 Motion to Approve Compromise under Rule 9019 filed by Trustee John Sywilok) filed by Michael S. Kopelman on behalf of Kopelman & Kopelman LLP. (Attachments: # 1 Exhibit A) (Kopelman, Michael) (Entered: 06/03/2021)
07/13/2021	227	Objection to Trustee's motion to approve settlement (related document: 221 Motion to Approve Compromise under Rule 9019 Filed by John Sywilok on behalf of John Sywilok. Hearing scheduled for 7/13/2021 at 10:00 AM at JKS – Courtroom 3D, Newark. (Attachments: # 1 Certification # 2 Exhibit # 3 Proposed Order # 4 Certificate of Service) filed by Trustee John Sywilok) filed by Michael S. Kopelman on behalf of Kopelman & Kopelman LLP. (Attachments: # 1 Exhibit A) (Kopelman, Michael) (Entered: 07/13/2021)

07/13/2021	228	Certification of Service (related document: 227 Objection filed by Attorney Kopelman & Kopelman LLP) filed by Michael S. Kopelman on behalf of Kopelman & Kopelman LLP. (Kopelman, Michael) Entered: 07/13/2021)
07/14/2021	229	Document re: Letter re: Errata (related document: 227 Objection filed by Attorney Kopelman & Kopelman LLP) filed by Michael S. Kopelman on behalf of Kopelman & Kopelman LLP. (Kopelman, Michael) (Entered: 07/14/2021)
07/14/2021	230	Certification of Service (related document: 229 Document filed by Attorney Kopelman & Kopelman LLP) filed by Michael S. Kopelman on behalf of Kopelman & Kopelman LLP. (Kopelman, Michael) Entered: 07/14/2021)
07/15/2021	231	Response to (related document: 221 Motion to Approve Compromise under Rule 9019 Filed by John Sywilok on behalf of John Sywilok. Hearing scheduled for 7/13/2021 at 10:00 AM at JKS – Courtroom 3D, Newark. (Attachments: # 1 Certification # 2 Exhibit # 3 Proposed Order # 4 Certificate of Service) filed by Trustee John Sywilok) filed by John Sywilok on behalf of John Sywilok. (Sywilok, John) (Entered: 07/15/2021)
07/16/2021	232	Response to (related document: 225 Brief in Opposition to Motion (related document: 221 Motion to Approve Compromise under Rule 9019 Filed by John Sywilok on behalf of John Sywilok. Hearing scheduled for 7/13/2021 at 10:00 AM at JKS – Courtroom 3D, Newark. (Attachments: # 1 Certification # 2 Exhibit # 3 Proposed Order # 4 Certificate of Service) filed by Trustee John Sywilok) filed by James French on behalf of TIAA, FSB, TIAA, FSB. (Attachments: # 1 Exhibit Exhibits # 2 Exhibit Exhibits) filed by Creditor TIAA, FSB, Creditor TIAA, FSB, Creditor TIAA, FSB, 227 Objection to Trustee's motion to approve settlement (related document: 221 Motion to Approve Compromise under Rule 9019 Filed by John Sywilok on behalf of John Sywilok. Hearing scheduled for 7/13/2021 at 10:00 AM at JKS – Courtroom 3D, Newark. (Attachments: # 1 Certification # 2 Exhibit # 3 Proposed Order # 4 Certificate of Service) filed by Trustee John Sywilok) filed by Michael S. Kopelman on behalf of Kopelman & Kopelman LLP. (Attachments: # 1 Exhibit A) filed by Attorney Kopelman & Kopelman LLP) filed by Scott S. Rever on behalf of Barry Roy Donaldson. (Attachments: # 1 Exhibit A) (Rever, Scott) (Entered: 07/16/2021)
07/16/2021	233	Response to (related document: 231 Response to (related document: 221 Motion to Approve Compromise under Rule 9019 Filed by John Sywilok on behalf of John Sywilok. Hearing scheduled for 7/13/2021 at 10:00 AM at JKS – Courtroom 3D, Newark. (Attachments: # 1 Certification # 2 Exhibit # 3 Proposed Order # 4 Certificate of Service) filed by Trustee John Sywilok) filed by John Sywilok on behalf of John Sywilok) filed by Michael S. Kopelman on behalf of Kopelman & Kopelman LLP. (Attachments # 1 Exhibit A # 2 Exhibit B) (Kopelman,

		Michael) (Entered: 07/16/2021)
07/16/2021	234	Response to (related document: 231 Response to (related document: 221 Motion to Approve Compromise under Rule 9019 Filed by John Sywilok on behalf of John Sywilok. Hearing scheduled for 7/13/2021 at 10:00 AM at JKS – Courtroom 3D, Newark. (Attachments: # 1 Certification # 2 Exhibit # 3 Proposed Order # 4 Certificate of Service) filed by Trustee John Sywilok) filed by John Sywilok on behalf of John Sywilok. Filed by Trustee John Sywilok, 232 Response to (related document: 225 Brief in Opposition to Motion (related document: 221 Motion to Approve Compromise under Rule 9019 Filed by John Sywilok on behalf of John Sywilok. Hearing scheduled for 7/13/2021 at 10:00 AM at JKS – Courtroom 3D, Newark. (Attachments: # 1 Certification # 2 Exhibit # 3 Proposed Order # 4 Certificate of Service) filed by Trustee John Sywilok) filed by James French on behalf of TIAA, FSB, TIAA, FSB. (Attachments: # 1 Exhibit Exhibits # 2 Exhibit Exhibits) filed by Creditor TIAA, FSB, Creditor TIAA, FSB, Creditor TIAA, FSB, 227 Objection to Trustee's motion to approve settlement (related document: 221 Motion to Approve Compromise under Rule 9019 Filed by John Sywilok on behalf of John Sywilok. Hearing scheduled for 7/13/2021 at 10:00 AM at JKS – Courtroom 3D, Newark. (Attachments: # 1 Certification # 2 Exhibit # 3 Proposed Order # 4 Certificate of Service) filed by Trustee John Sywilok) filed by Michael S. Kopelman on behalf of Kopelman & Kopelman LLP. (Attachments: # 1 Exhibit A) filed by Attorney Kopelman & Kopelman LLP) filed by Scott S. Rever on behalf of Barry Roy Donaldson. (Attachments: # 1 Exhibit A) filed by Creditor Barry Roy Donaldson) filed by Michael S. Kopelman on behalf of Kopelman & Kopelman LLP. (Kopelman, Michael) (Entered: 07/16/2021)
07/16/2021	235	Certification of Service (related document: 233 Response filed by Attorney Kopelman & Kopelman LLP, 234 Response filed by Attorney Kopelman LLP) filed by Michael S. Kopelman on behalf of Kopelman & Kopelman LLP. (Kopelman, Michael) (Entered 07/16/2021)
08/05/2021	236	Response to (related document: 221 Motion to Approve Compromise under Rule 9019 Filed by John Sywilok on behalf of John Sywilok. Hearing scheduled for 7/13/2021 at 10:00 AM at JKS – Courtroom 3D, Newark. (Attachments: # 1 Certification # 2 Exhibit # 3 Proposed Order # 4 Certificate of Service) filed by Trustee John Sywilok) filed by Michael S. Kopelman on behalf of Kopelman & Kopelman LLP. (Attachments: # 1 Exhibits) (Kopelman, Michael) (Entered: 08/05/2021)
08/18/2021	237	Order Granting Motion to Approve Compromise under Rule 9019. (Related Doc # 221). Service of notice of the entry of this order pursuant to Rule 9022 was made on the appropriate parties. See BNC Certificate of Notice. Signed on 8/18/2021. (zlh) (Entered: 08/18/2021)
		Transcript regarding Hearing Held 07/27/2021 (related document: Hearing Held). (Tracy Gribben Transcription) (Entered: / /2021)

08/18/2021	239	Notice of Appeal to District Court. (related document: 237 Order on Motion to Approve Compromise under Rule 9019). Fee Amount \$298. Filed by Michael S. Kopelman on behalf of Kopelman & Kopelman LLP. Appellant Designation due by 09/14/2021. Transmission of Designation Due by 09/30/2021. (Attachments: # 1 Exhibit Doc 237) (Kopelman, Michael) (Entered: 08/31/2021)
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B. STATEMENT OF THE ISSUES TO BE PRESENTED ON APPEAL

1. The Bankruptcy Court lacked jurisdiction to approve the settlement between the Chapter 7 Trustee and Creditor Barry R. Donaldson. (“The Settlement”).

2. The Bankruptcy Court should not have approved the settlement until the Trustee obtained an order approving the sale of Debtor’s home and a closing on such approved sale occurred.

3. The Bankruptcy Court should not have approved the settlement because there was only a *de minimus* difference between the proposed settlement and the settlement between the Debtor and Barry R. Donaldson set forth in the order confirming plan of reorganization entered 12/2/2020 (Doc 173) which was already on appeal.

4. The Bankruptcy Court should not have approved the settlement because it violates the absolute priority rule.

5. The Bankruptcy Court abused its discretion by approving the settlement because it should have adjourned the Trustee’s motion to approve settlement until such time as closing on Debtor’s home had taken place and the net proceeds on hand determined.

6. The Bankruptcy Court erred by not addressing the four criteria set forth in *In re Martin*, 93 F.3d 389 (3d Cir. 1996).

7. The settlement did not satisfy the first criteria set forth in *In re Martin*, 93 F.3d 389 (3d Cir. 1996) - - the probability of success in litigation - - because Donaldson is an unsecured creditor as a matter of law. There was nothing to compromise.

Respectfully submitted,

KOPELMAN & KOPELMAN LLP

Dated: September 1, 2021

BY: /s/ Michael S. Kopelman
Michael S. Kopelman, Esq.